

89-361

Supreme Court, U.S.

FILED

AUG 25 1989

JOSEPH P. SPANIO, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

CASE NO. _____

DANIEL L. PARRISH ,

PETITIONER ,

V.

SHELVA P. JOURNIGAN.

BRUCE G. JOURNIGAN.

T. YATES DOBSON JR.

JAMES W. NARRON.

RESPONDENTS .

FROM THE UNITED STATES

COURT OF APPEALS FOR THE

FOURTH CIRCUIT

THE PETITION FOR WRIT OF CERTIORARI

DANIEL L. PARRISH
8512 CULFOR CRESCENT
NORFOLK, VA. 23503
(804) 588-5369

55 pp

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY
AT THE TIME OF FILMING. IF AND WHEN A
BETTER COPY CAN BE OBTAINED, A NEW FICHE
WILL BE ISSUED.

RULE 21-I-A QUESTIONS PRESENTED FOR REVIEW

1. WHETHER : THE U.S. COURT OF APPEALS FOR THE
FOURTH CIRCUIT FAILED TO DISTINGUISH THE
PERSONAL CLAIMS OF DANIEL L. PARRISH , IN-
-DIVIDUALLY FROM THE CLAIMS MADE BY THE FE-
-FENDENTS .
2. WHETHER : THE U.S. COURT OF APPEALS FOR THE
FOURTH CIRCUIT FAILED TO RECOGNIZE THE DATE
THE WILL WAS FILED WITH THE DEPUTY CLERK OF
SUPERIOR COURT , IN SMITHFIEKD , N.C. AND
STAMPED BY PAULETTE STEWART WITH THE COURT
STAMP AND INNECIALED .
3. WHETHER : THE U.S. COURT OF APPEALS FOR THE
FOURTH CIRCUIT FAILED TO RECOGNIZE THE WILL
OF GLADYS L. PARRISH WAS FILED THE AFTER-
- NOON OF HER DEATH TO RECORD IN SMITHFIE-
-LD , N.C. FILED JAN 20,1988 - 3-3 4 - P.M.
4. WHETHER : THE COURT FAILED TO RECOGNIZE THE
DEATH OF GLADYS L. PARRISH WAS JANUARY
20 ,1988 IN THE (A# M #) IN REX HOSPITAL
IN RALEIGH ,N.C.

5. WHETHER, THE DECEASED GLADYS L. PARRISH LAY
IN THE SMITHFIELD ,N.C. HOSPITAL DEC 14,
1987 WHILE (T. YATES DOBSON JR.) FILED
THE DOWERS POWER OF ATTORNY FOR SHELVA P.
JOURNIGAN ..
6. WHETHER : BY T . YATES DOBSON'S INDITING
THE WILL AND WITNESS HIS OWN WORK MAKE
IT CONFLICT OF INTEREST .
7. WHETHER . THE CLERK , WILL R. CROCKER CAN
PROBATE A WILL AS A (EX OFFICIO JUDGE OF
THE PROBATE COURT IN SMITHFIELD ,N.C.
8. WHETHER , THEM WILL MR. CROCKER PROBATED
WAS THE WILL FILED AFTER THE DEATH OF
GLADYS L. PARRISH .
9. WHETHER , THE \$4500.00 PAID TO THE CLERK
OF THE COURT NOVEMBER 21, 1988 WAS FOR
HIS SERVICES TO THE ESTATE OF GLADYS L.
PARRISH .
10. WHETHER , THE DECEASED , GLADYS L. PARRISH
KNEW OF THE NINE (9) INSURANCE POLICIES
HELD BY SHELVA P. JOURNIGAN AGAINST HER
LIFE :

11. WHETHER . THE DECEASED WOULD GO TO T.YATES DOBSON JR. FOR HIS SERVICES ,WHEN IN THE YEAR OF 1971 SHE SUED HIM TO REMOVE HIM FROM CONTROLLING HER ESTATE .

12. WHETHER A TYPEWRITTEN DEED DRAWN TO SHELVA P. JOURNIGAN (JULY 30,1962) NOTORIZED AND PUT TO RECORD WITHOUT GRANTOR'S SIGN-
-ATURE MAKE IT VOIDABLE .

13. WHETHER , A DEED DRAWN AGAINST THIS PROPERTY BY T,YATES DOBSON JR. NOTORIZED BY HIS WIFE PAMSEY E. DOBSON , TRANSFERING THE PROPERTY TO (BRUCE GILL JOURNIGAN AND SHELVA P. JOURNIGAN WIFE) MAKE IT VOIDABLE .

14. WHETHER : A LADY DRAWING A WILL IN THE YEAR OF 1977 GIVING ALL HER CHILDREN A PART OF HER ESTATE (SHARE ,SHARE ,
& SHARE ALIKE , WOULD DRAW A WILL AND HAVE IT FILED ON RECORD AFTER HER DEATH GIVING ONE DAUGHTER ALMOST ALL THE MONEY AND-PROPERTY SHE OWNED . THEREBY CANCELING THE WILL ON RECORD .

15. WHETHER , JAMES W. NARRON ,AS LAWYER FOR
THE EXECUTRIX CALLED Y YATES DOBSON JR.
TO TESTIFY AT TRIAL FOR THE CAVEATERS
TO VERIFY THE WILL THAT WAS FILED AFT-
- ER GLADYS L; PARRISH'S DEATH .

16. WHETHER , SHELVA P. JOURNIGAN SHOULD BE
ALLOWED TO KEEP THE MONIES OR PROPERTY
AQUIRED BY THE DEEDS AND WILL THAT WAS
PROBATED IN SMITHFIELD, N.C. JAN 25,
1988 .

17. WHETHER , THE DEED DRAWN TO (VERNON L.
PARRISH & BARNEY P. PARRISH) ON MAY
19,1959 AND RECORDED JUNE 10,1959 TO
THE SMITHFIELD ,N.C. DEEDSOF RECORD
WITHOUT GRANTORS SIGNATURE MAKE THIS
DEED VOIDABLE .

18. WHETHER , DEED DRAWN (MAY 2,1963) BY
MR. NARRON ,NOTORIZED BY (ELLEN L.
NARRON , FOR VERNON L. PARRISH WITH
GRANTORS SIGNATURE , FILED MAY 17,1963 ^{out}
OF WHICH HAD A GOVERNMENT LOAN , VIOLATE
FEDERAL PROCEDURES .

19. WHETHER : DEED DRAWN (JULY 7, 1969) FOR
0.77 ACRES FOR BARNEY PERSON PARRISH OF
THE FARM PROPERTY , DRAWN , NOTORIZED BY
LAWYER (OTIS L. DUNCAN) FILED JULY 22,
1970 WITHOUT GRANTORS SIGNATURE VOIDABLE.
20. WHETHER : SUBDIVISION OF FARM PROPERTY MADE
JUNE 21, 1971 , NOTORIZED AND PUT TO RECO-
RD WITHOUT THE GRANTORS KNOWLEDGE OR
SIGNATURE , VOIDABLE .
21. WHETHER : DEED DRAWN FOR (TWENTY FIVE ACR-
ES OF THE FARM PROPERTY (OCT. 17, 1970)
FOR BARNEY PARRISH , MOTHER GOT VERY
SICK IN LATE 1977 , SIGNED A DEED FOR
BARNEY P. & VERNON L. PARRISH FOR SURV-
EYS THEY HAD MADE FOR (TWO (2) OF THE
DECEASED HOUSES . ARE THESE DEEDS MADE
BY THIS METHOD VOIDABLE . FILED 1978
22. WHETHER . WHY : WOULD GLADYS L. PARRISH
SIGN HER PROPERTY OVER TO ANY OF HER
CHILDREN , AS OF (APRIL 1, 1977) THE
DECEASED MADE A WILL APPOINTING (GEO-
RGE B. MAST) EXECUTOR OF HER ESTATE .

THE WILL BY THE WRITING , STATED AS FOLLOWS
TO MY LIVING CHILDREN .

(SHARE , SHARE , AND SHARE)

(A -LIKE)

23, WHETHER : THE HEIRS SHOULD BE ALLOWED TO
KEEP THE PROPERTY OR THE MONIES DERIVED
BY THE METHOIDS IT WAS AQUIRED .

24. WHETHER : JAMES W. NARRON OR T. YATES
DOBSON JR. SHOULD BE ALLOWED TO BE IN-
- VOLVED CONCERNING THE DECEASED ESTATE
AFTER THEIR PAST HISTORY AGAINST THE
WIDOWED LADY , OF WHICH COST HER APP-
(12 $\frac{1}{2}$) ACRES OF HER FARM .

25. WHETHER : BY JAMES W. NARRON'S ADVICE
THE TOBACCO ALLOTMENT WAS SOLD ,THEREE
DEPRESATING THE FARMBY (40 %) FORTY
PERCENT , SALE OF HOUSEHOLD FURNISHIN-
-GS (LOST \$ 1,046.87) SOIL TEST TO
NARRON (\$ 400.00) FOR FARM LAND .
(" KATHRYN CROCKER & ALICE NARRON ")
FIFTY \$50.00 DOLLARS (EACH) \$100. 00
CLERK OF SUPERIOR COURT (\$ 4500.00) 0
WHICH IS WILL R. CROCKER .

26. WHETHER : WHETHER THE (EXECUTRIX) BY THE
ADVICE OF THE ESTATE LAWYER CAN DRAW A
DEED FOR HERSELF AND HUSBAND FOR (TWE-
LVE AND ONE HALF FEET) OF THE ESTATES
PROPERTY .

27. WHETHER : A WILL FILED AFTER THE DEATH OF
GLADYS L. PARRISH) GIVING THE (EXECUT-
RIX) (\$47,001.83) (\$ 12,000.00) AND
HOLDING (NINE)(9) INSURANCE POLICIES
ON THE DECEASED LIFE , APART OF THE FARM
AND AUTHORITY TO DO ANYTHING SHE MAY
PLEASE WITH THE REST OF THE ESTATE AS
(EXECUTRIX) AND HELD IN PLACE BY THE
ASSISTANCE OF (PAULETTE STEWART , WILL
R. CROCKER , T.YATES DOBSON JR, & JAMES
W. NARROW , THROUGH AND BY THE COURTS
IN SMITHFIELD ,N.C. (CONSTITUTE FRAUD)
AND PERJURY .

28. WHETHER : BY THE ADVICE OF THE ESTATE LAW-
-YER THE (EXECUTRIX) CAN DISBERSE HER
MONIES TO HERSELF BY THE WILL FILED
AFTER THE DEATH OF GLADYS L. PARRISH
AND HOLD ALL THE REST OF THE ESTATE TO
DO AS SHE WELL PLEASES .

29. WHETHER . WILL R. CROCKER , CLERK OF SUP-
-ERIOR COURT OF SMITHFIELD ,N.C. CAN
ACT AS (EX OFFICIO JUDGE OF PROBATE
WITHIN THE SAME COURT) WITHOUT VIOLAT-
-ING FEDERAL RULES OF PROCESS .

30 . WHETHER ; THE STATE COURT ONLY REPRESE-
-NTS PART OF THE PEOPLE , AS TO THE
FEDERAL COURTS OF WHICH REPRESENT ALL
THE PEOPLE UNDER (CONSTITUTIONAL LAW)

(1) U.S. VA. 1965 . CONSTITUTIONAL DEPRI-
-VATION MAY NOT BE JUSTIFIED BY SOME
REMOTE ADMINISTRATIVE BENEFIT TO STATE
U.S. C.A. CONST. AMEND. 24 .

HARMAN V. FORSSENIOUS ,85 S .CT .1177,
330 U.S. 528 ,14 L.ED.2D 50.

(2) U.S. ARIZ ,CAL. & N.Y. 1966 . WHERE
RIGHTS SECURED BY CONSTITUTION ARE INVOL-
-VED , THERE CAN BE (NO) RULE MAKING OR
LEGISLATION WHICH WOULD ABROGATE THEM.

MIRANDA V. STATE OF ARIZ. 86 S.CT.
1602 ,384 U.S. 436 ,16 L.ED. 2D.
694 .

31. WHETHER : A CLERK OF A FEDERAL COURT OR
STATE COURT ASSIST IN PREPARING OF
DOCUMENTS AS JUDGE OR MAGISTRATE TO
THE DEFENDENTS OR DEFENDENTS COUNSEL.
WITHOUT VIOLATING THE U.S. SUPREME CO-
-URT RULE ONE , SEE (28 USC STA. 955)

32. WHETHER : A CLERK , OF A FEDERAL COURT
CAN ASSIGN A CASE OUT OF JURISDICTIONAL
LIMITS , AND SEND NOTICE TO APPEAR
THEREBY DISMISSING THE CASE FOR FAILURE
TO PROSECUTE BY THE JUDGE : SEE TERRIT-
-ORIAL LIMITS .

33. WHETHER : A CLERK OF A FEDERAL COURT CAN
SET A DATE FOR A STATUS CONFERENCE UN-
-TIL THE CASE HAS BEEN SET FOR TRIAL.

34. WHETHER : A CLERK OF A FEDERAL COURT CAN
APPEAL A (WRIT OF MANDAMUS) AS THE
MAGISTRATE OF THE COURT . FURTHER SIX
DAYS BY RECORD BEFORE THE COURT HAD
RECEIVED THE DOCUMENTS .

35. WHETHER : A FEDERAL COURT CAN DEMAND A
NONRESIDENT TO ATTEND A STATUS CONF-
-ERANCE , APP. TWO HUNDRED AND FIFTY
MILES AWAY FROM HIS FORUM .

36. WHETHER : THE LAWS REQUIRES , THAT THE
STATUS CONFERENCE MUST BE TAKEN IN
THE STATE , CITY OR COUNTY , WHERE-
-EVER THE PERSON RESIDES .

37. WHETHER : WILLS MADE BY TESTATORS CON-
- CERNING LAND CAN BY PRINCIPAL OF LAW
APPLIABLE TO WILLS DISINHURT ANY BLOOD
HEIR UNLESS THE WILL EXPRESSES CLEAR
WORDS AND CERTAIN INTENTIONS ON THE
(FACE) OF THE WILL .

38. WHETHER : WILLS MADE BY (TESTATORS)
CONCERNING LAND , THE HEIR AT LAW
NEVER TAKES INTENTIONS OF THE TEST-
-ATORS HIS RIGHT IS (PARAMOUNT)

39. WHETHER : THE LAW CONCERNING LAND FAV-
-ORS THAT CONSTRUCTION OF WILLS WILL
NOT DISINHURT HEIRS , FURTHER HEIRS
TO LAND ARE NOT TO BE DISINHURTED

40. WHETHER : RENTS (DUE) FOR THE YEAR OF
THE TESTATORS DEATH GO WITH THE LAND
OR GO TO THE (RESIDUARY LEGATOREES
AND DEVISES OF THE ESTATE) .

41. Q , A LAWYER UNDER STATEMENT OF FACTS TO
THE COURT , GIVES THE IMPRESSION THAT THE
DECEASED GLADYS L. PARRISH FELL ILL AND
AND DIED WHEN IN (FACT) HER LEGS WERE
AMPITATED BY THE DIRECTIONS OF SHELVA P.
JOURNIGAN , BY USE OF THE DOWERS POWER
OF ATTORNY SUPPLIED BY (T. YATES DOBSON
JR. AT THE TIME THE DECEASED LAY IN THE
JOHNSTON MEMORAL HOSPITAL IN SMITHFIELD
N.C. ON DEC 14, 1987 - BY RECORD .

42. WHETHER : THE COURT CONSIDERED , THAT THE
ACTION WAS RAISED IN SMITHFIELD , N.C
AFTER TRANSFER COULD NOT BE UTILIZED
BY THE DEFENDENTS COUNSEL .

43. WHETHER : MODIFIED DISMISSAL BY THE U.S.
COURT OF APPEALS , MUST RAISE QUESTIONS
AS TO THE VALIDITY OF THE DISMISSAL BY
JUDGE FOX IN WILMINGTON , N.C.

44. WHETHER : TO BE " SUBSTANTIALLY JUSTI-
-FIED " MEANS OF COURSE MORE THAN
MERELY UNDERSERVING OF SANCTION'S
· FOR FRIVOUSNESS : THAT ASSUREDLY NOT
THE STANDARD FOR GOVERNMENT LITIGATI-
-ONS OF WHICH A REASONABLE PERSON
WOULD APPROVE .

45. WHETHER : A WILL IS VALID IF SUMMITTED
TO RECORD THE SAME DAY A LADY DIES ,
ONE HOUR AND THIRTY FOUR MINUTES AFT-
-ER HER DEATH AND THEREBY SHOWS THE
CLERKS STAMP OF THE COURT , THE DATE ,
AND THE CLERKS SIGNATURE , OF WHICH
· WOULD VOID THE WILL ON RECORD .

46. WHETHER : THE COURT'S CANNOT OVER THE
FEELING THAT TO SUPPRESS EVIDENCE OF
THE NATURE OR OVERLOOK SUCH EVIDENCE
OF THIS NATURE IS IN THE HIGHEST DE-
-GREE DANGEROUS , AND THAT IT'S SUPP-
-RESSION , OR TO OVERLOOK , WOULD TO
TEND VERY STRONGLY TO IMPAIR THE EFFI-
-CACY OF STATUTES RELATING TO PROOF AND
REVOCATION OF COMPLAINTS .

47. WHETHER : DEFENDENT'S , BY PHANTAM'S OF
SPECULATIONS , BY THERE ROLE IN THIS
INSTANT CASE , BY VIVID ACCUMMILATIONS
OF GO BETWEEN PAPER WORK CURTAIL THE
FACTS & EVIDENCE PERTIENT TO HOLD
THEIR MISJUSTICE IN PLACE .

48, WHETHER : BY THE PLAINTIFF *.PETITIONER'S
MAIL BEING MONITORED , COULD BRING CAU-
-SE , THAT THE COURTS DID NOT GET THE
DOCUMENTS CONCERNING THE REAL ISSUES
LEAVING THE HONORABLE JUDGES WITHIN THE
CLUTCHES OF THE DEFENDENTS ISSUE'S .

49. WHETHER : THE ESTATE LAWYER CAN PRODUCE
AN ACCOUNTING OF THE ESTATE , FOR THE
EXECUTRIX THE VERY SAME DAY THE WILL
IS RECEIVED FROM THE CLERK TO BE PRO-
-BATED BY THE HEAD CLERK , AS (EX
OFFICIO JUDGE OF PROBATE) . SIX (6)
BANK ACCOUNTS , ESTIMATED HOUSEHOLD
FURNISHING'S , RENTS DUE , APPRAISED
VALUE OF THE FARM . PRYER TO THE
DEPOSITION OF THE WILL .

50. WHETHER ; THE ATTORNEY FOR THE ESTATE CAN
FILE A TESTAMENTARY REPORT FOR THE EXEC-
-UTRIX TO THE PROBATE COURT LEAVING
THE ACCOUNTING OF NINE (9) INSURANCE
POLICES MADE PAYABLE TO THE EXECUTRIX ,
OFF THE PROBATE REPORT .

51. WHETHER : THE EXECUTRIX , BY THE ADVICE
OF JAMES W, NARROW , SUGGESTED ESTATE
LAWYER BY (T YATES DOBSON JR.) SECR-
ETARY , TRADE OFF ESTATE PROPERTY TO
SECURE THE ULTIMATE END , SO AS TO
CLOSE OUT THE ESTATES .

52. WHETHER : THE DEFENDENT'S CAN CONTINUE
THEIR ARRAY OF MOVES TO COLLECT FEES
FOR THEIR SERVICES AS LEGAL REPRESE-
-NATIVES OF THE ESTATE OF GLADYS L.
PARRISH THE DECEASED ,

53. QMN , THE FACTS AS TO THIS COMPLAINT
LIES WITHIN THE REALM OF THE LEGAL
COMPONENT SYSTEM OF RECORDS IN THE
RECORD DEPARTMENT IN SMITHFIELD. N.C.
JOHNSTON COUNTY .

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P A R T I E S

DANIEL L. PARRISH ----- PETITIONER

SHELVA P. JOURNIGAN ----- RESPONDENT

BRUCE G. JOURNIGAN ----- RESPONDENT

T. YATES DOBSON JR. ----- RESPONDENT

JAMES W. NARROW : ----- RESPONDENT

TABLE - OF AUTHORITY

WESTFALL V. ERWIN , 484 U.S. -108 -S CT ,
580 - 98-L .ED. 619 - 1988

ASHBURN V. UNITED STATES , 740 F. 2D 843 ,
850 , (CA II - 1984)

SEC. V. MUSELLA (1984) FED SEC .L. REP .
91, 647, P. 99 -283 (SDNY 1984)

H.R. REP. NO. 99-120-P. (1985) U.S.CODE
CONG & ADMIN NEWS (1985) PP. 132-138

SMITH V. MONTGOMERY COUNTY 573 F. SUPP. 604
614 , MD ,(1983)

MOORE V. MOORE - 56 - CAL - 89

DAVIS V. STRANDE'S EX'R (86 VA)(793 ,
II S.E. 106 ,8 L. R. A. 261 .

ADAIR V. ADIAR , 30 GA. 102 - 1860

SANDS V, SANDS 112 ILL. 225 -1885

JURISDICTIONAL GROUNDS

(1) THE DATE OF THE JUDGMENT TO BE REVIEWED IS MAY 4, 1989 . IT WAS DECIDED MAY 4, 1989 . A REPRINTED COPY IS APPENDED AT PAGES (A 14 TO 18 .

(2) THE DATE OF THE ORDER DENYING THE PETITION IS JUNE 5, 1989 . IT WAS ENTERED JUNE 5, 1989 . (A REPRINTED COPY IS APPENDED AT PAGES (A 19 TO 20

(3) THE DATE OF THE ORDER TO BE REVIEWED IS OCTOBER 12, 1988 IN WILMINGTON , FILED IN RALEIGH NORTH CAROLINA . (A REPRINTED COPY IS APPENDED AT PAGES (A 20 - TO 22 .

(4) THE BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE WAS THAT PETITIONER , A CITIZEN OF VIRGINIA , AND GLADYS L. PARRISH DECEASED , SUED CITIZENS OF NORTH CAROLINA FOR POSSESSIVE MOVES AGAINST THE DECEASED FOR YEARS .

FOR DEPRIVATION OF RIGHTS , PRIVILIDGES ,
IMMUNITIES , FREEDOMS AND LIBERTIES UNDER
COLOR OF LAW THE STATE OF NORTH CAROLINA .
AND UNDER THE FIFTH , SEVENTH , EIGHTH ,
AND FOURTEENTH AMENDMENTS TO THE UNITED
STATES CONSTITUTION , TITLE 42, STA. 1983
OF THE UNITED STATES CODE ,AND THE UNITED
STATES CONSTITUTION ,FOR AN AMOUNT IN CONT-
-ROVERSY THAT EXCEEDS \$10.000.00

(5) THE AUTHORITY CONFERRING JURISDICTION
ON THIS HONORABLE COURT IS THE UNITED STA-
-TES CONSTITUTION ,ARTICLE IV ,STATURE (I)
(FULL FAITH AND CREDIT CLAUSE) AND ITS
IMPLEMENTATION BY STATURES UNDER 28 U.S.C.
STATURE 1738

(6) THE CONSTITUTION PROHIBITS AGAINST ANY
STATE ENTERING INTO AN AGREEMENT OR CON-
-TRACT WITH ANOTHER STATE . PROHIBIT'S
COMPACTS RELATING TO BOUNDERIES .

CONSTITUTIONAL - AUTHORITY

(1) U.S. CONSTITUTION , AMENDMENT V:

NO PERSON SHALL... BE DEPRIVED OF LIFE,
LIBERTY , OR PROPERTY , WITHOUT DUE PROCESS
OF LAW : ...

(2) 28 USC -S 1738 - IN PERTINENT PART :

" SUCH " ACTS , RECORDS AND JUDICIAL
PROCEEDINGS OR COPIES THEREOF , SO AUTHEN-
- TICATED , SHALL HAVE THE SAME FULL FAITH
AND CREDIT IN EVERY COURT WITHIN THE UNITED
STATES AND ITS TERRITORIES AND POSSESSIONS
AS THEY HAVE BY LAW OR USAGE IN THE COURTS
OF SUCH STATES , TERRITORY , OR POSSESSION
FROM WHICH THEY WERE TAKEN .

(3) " BOUNDARIES " THE U.S. CONSTITUTION PRO-
HIBITS AGAINST ANY STATE ENTERING INTO AN
AGREEMENT OR CONTRACT WITH ANOTHER STATE
THUS PROHIBIT'S CONTRACTS RELATING TO
BOUNDARIES .

STATE OF R F. V. COM. OF MASS. , 37, U.S.
657 , 12 PET 657 , 9 L. ED. 12 -33

UNITED STATES CONSTITUTION , AMENDMENT V:

(1) NO PERSON SHALL . . . BE DEPRIVED OF
LIFE . LIBERTY , OR PROPERTY , WITHOUT DUE
PROCESS OF LAW ; ...

(2) JURISDICTION OF THIS COURT IS INVOKED
UNDER TITLE 28 , U.S. CODE SECTION 1343 -

(3) - A

(3) TRANSFER OF PROPERTY AND MONIES OF THE
DECEASED ESTATE UNLAWFULLY CONVERTED AND
TAKEN BY FRAUD IN VIOLATION OF TITLE 18.
STATUTE 1017 AND TITLE 18 - STATUTE 1021.

(4) TITLE 28 - STATUTE 1343 - (1) (2)

(3) & (4)

(JUNE 25, 1948 , CH. 646, 62 STAT. 932 ;
SEPT. 3, 1954 CH. 1263 STAT, 42 , 68 STAT.
1241 SEPT. 9, 1957, PUB. L. 85-315, PART III
STAT 121, 71 STAT. 637.)

UNITED STATES CONSTITUTION .
AMENDMENT - V:

NO PERSON SHALL ... BE DEPRIVED OF LIFE , LIB-
-ERTY ,OR PROPERTY ,WITHOUT DUE PROCESS OF LAW:

STATURE - 1343 , (3) TO REDRESS THE DEPRIVAT-
-ION , UNDER COLOR OF ANY STATE LAW ,STATURE,
ORDINANCE ,REGULATION , OR USAGE , OF ANY RIGHT
PRIVILEGE OR IMMUNITY SECURED BY THE CONSTITUT-
-ION OF THE UNITED STATES .

FIRST AMENDMENT , PROTECTION AGAINST ARBITRARY
ACTIONS BY PUBLIC OFFICIALS, UNDER AMERICAN ,
CONSTITUTIONAL LAW :

FIFTH & FOURTEENTH AMENDMENT , (DUE PROCESS)
HEAR BEFORE IT CONDEMS , MOORE V. DEMPSEY ,PAGE
100 , PALKO V. CONNECTICUT , PAGE 102 .

ARTICLE VI (THE "KINGPIN CLAUSE ") WHERE CONF-
-LICT EXISTS REST IN THE HANDS OF THE JUDICIARY ,
WITH THE FINAL DECISION MADE BY THE SUPREME COURT
COHENS V. VIRGINIA ,PAGE 276: MC CULLAH V. MARY-
-LAND , PAGE 46 .

REFERENCE TO OFFICIAL REPORT OF OPINION

A REPRINTED COPY OF THE OPINION OF THE UNITED STATES COURT OF APPEALS , FOURTH CIRCUIT , IS APPENDED AT PAGE *A1* TO *A6* AND IS REFERED TO AS DANIEL L. PARRISH V. SHELVA P. JOURNIGAN , ET AL . (NO. 88-2945) 4TH CIRCUIT .(1989)

A REPRINTED COPY OF THE OPENION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA IS APPENDED AT PAGES
CASE NO . 88-547-CIV-5 — *A-7-A9*

(7)" JUDGE BOWEN " TELEPHONE CONFERANCES ABOUT

THE CASE WITH MR. NARROW .

(8) CLAUD L. DUNN ,JR. CPA FOR ANALYSES
OF(ALL) (B) ANK RECORDS .

FOOT - NOTE - NO . (2)

U.S. DISTRICT COURT , EASTERN DISTRICT Of
NORTH CAROLINA , RALEIGH DIVISION :

(I) WALTER E. BROCK JR. COUNSELER FOR
SHELVA P. & BRUCE JOURNIGAN .

(2)" J. RICH LEONARD " CLERK , AND MAGIS-
-TRATE FOR THE U.S. DISTRICT COURT ,
EASTERN DISTRICT OF NORTH CAROLINA. SEE
PAGE ONE , LOCAL RULES OF PRACTICE
AND PROCEDURES .

(3) GARY S. PARSONS , COUNSELER FOR T.YATES
DOBSON JR. & JAMES W. NARROW .

(4) U.S. DISTRICT JUDGE (JAMES C. FOX)
LOCATED IN WILMINGTON , N.C.

(5) RICHARD T. BOYETTE , RALEIGH LAWYER .
- .

RULE - 21 (B) AND RULE 28.1

FOOT - - NOTE

RULE 21 (B) . SUPERIOR COURT , JOHNSTON COUN-
-TY COURTHOUSE :

(1) WILL R. CROCKER. CLERK AND EX OFFICIO
JUDGE OF PROBATE :

(2) PAULETTE STEWART , DEPUTY CLERK OF SUPER-
-IOR COURT , SMITHFIELD , N.C.

(3) T. YATES DOBSON JR. LAWYER , NOW JUDGE
OF THE IITH DISTRICT COURT , SMITHFIELD
NORTH CAROLINA .

(4) JAMES W. NARRON , LAWYER FOR THE ESTATE
OF GLADYS L. PARRISH .

(5) W. A. HOLLAND JR. COUNSEL FOR THE
CAVEATOR'S , VERNON L. PARRISH , RUBY
P. BRADY , & BARNEY P. PARRISH :

(6) L. AUSTIN STEVENS , ATTORNY
PRACTING IN JOHNSTON COUNTY , N.C. A
MEMBER OF THE BAR SINCE 1959 , AFFIDA-
- VIT .

FOOT - NOTE - NO. (3)
-----{3}---

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

- (1) CHIEF JUDGE - ERWIN ;
- (2) CIRCUIT JUDGE - RUSSELL ;
- (2) CIRCUIT JUDGE - WILKINSON ;
- (1) CLERK . DEPUTY . KELLI AYE COSTAIN

FOOT -- NOTE

JANUARY 25, 1988 , JAMES W, NARRON , AS EST-
-ATE LAWYER AND SHELVA P. JOURNIGAN , GAVE THE
TESTAMENTARY ADMINISTRATION (CTA) APPLICAT-
-ION FOR PROBATE AND LETTER CONCERNING THE
ESTATES FINANCES , INCLUDING (6) SIX BANK
ACCOUNTS , ESTIMATED HOUSEHOLD FURNISHINGS ,
RENTS DUE THE ESTATE , ESTIMATED VALUE OF
THE FARM , (SWORN TO AND SUBSCRIBED TO BE-
-FORE PAULETTE STEWART , DATED JANUARY 25.
1988 THE DAY THE WILL WAS RECEIVED FROM MRS.
PAULETTE STEWART FOR PROBATE BY CLERK (WILL
R. CROCKER AS EX OFFICIO JUDGE OF PROBATE IN
THE SUPERIOR COURT IN SMITHFIELD , N.C.

NOTICE TO BENEFICIARIES , FROM PAULETTE
STEWART , SIGNED BY PAULETTE STEWART , AS THE
DATE OF PROBATE OF THE WILL WAS JANUARY 25, 1988

A R G U M E N T

THE WRIT OF CERTIORARI SHOULD BE GRANTED FOR THE REASON'S THAT THE OPINIONS AND JUDGMENTS OF THE CIRCUIT COURT FAILED TO FOLLOW THE RULES LAID DOWN BY CONSTITUTIONAL LAWS AS PROVIDED FOR PROTECTION FROM PUBLIC OFFICIAL UNDER THE EQUAL PROTECTION OF THE LAW UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE U.S. SEE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT . SEE ALSO BAKER V. CARR, PAGE 196 BOLLING V. SHARPE , PAGE 91; BROWN V. BOARD OF EDUCATION OF TOPEKA, PAGE 91 , CRAIG V. BOREN PAGE 92 . FINE PAGE 69 .

SEE U.S. CONSTITUTION AMENDMENT ONE , PROTECTION AGAINST ARBITRARY ACTIONS BY PUBLIC OFFICIALS , EXCEEDENLY SEE FOURTH THROUGH THE EIGHT AMENDENTS . ALSO SEE DUE PROCESS OF LAW PAGE 66: SUBSTANCES RIGHTS , PAGE 86 .

NATURAL RIGHTS , AMERICAN POLITICAL CREED THAT MEN ARE ENDOWED BY THEIR CREATOR WITH CERTAIN RIGHTS THAT MAY NOT BE ABRIDGED BY GOVERNMENT . SEE NATIONAL LAW. PAGE 13 .

(1) THE INDITED DOWERS POWER OF ATTORNEY BY T. YATES DOBSON JR. DATED DEC.14,1987 AND PUT TO RECORD BY HIM , GIVING SHELVA P. JOURNIGAN COMPLETE POWER OVER THE DECEASED ESTATE AND LIFE AS THE DECEASED LAY IN JOHNSTON MEMORIAL HOSPITAL L N.C.

(2) THE WILL FILED BY ASS. DEPUTY CLERK OF SUPERIOR COURT , PAULETTE STEWART , JANUARY 20, 1988 AT 3.34 - P, M , HOURS AFTER THE DEATH OF GLADYS L. PARRISH IN REX HOSPITAL IN RALEIGH,N.C.

(3) THE WILL RETRIEVED BY SHELVA P. JOURNIGAN FROM PAULETTE STEWART ,AND GIVEN TO WILL R. CROCKER HEAD CLERK , AS (EX OFFICIO JUDGE OF PROBATE SUPERIOR COURT JANUARY 25,1988) .

(1) WILL R. CROCKER CLERK , AS PROBATE JUDGE , PAULETTE STEWART , T. YATES DOBSON JR. & JAMES W. NARRON AS ASSISTED TO BRING THIS NEWLY FILED WILL INTO EFFECT OF WHICH IMMEDIATELY GAVE SHELVA P. JOURNIGAN APP.) \$70,000 .00 DOLLARS IN CASH PLUS COMPLETE CONTROL OVER ANY AND ALL THE ESTATES HOLDINGS TO , SELL , GIVE AWAY OR USE FOR HER OWN USE WITHOUT AS MUCH AS GIVEN AN ACCOUNTING TO ANY OTHER HEIR .PLUS
(9) INSURANCE POLICIES HELD BY (EXERATRIX) .

(c) THE DEFENDENTS (T. YATES DOBSON JR, JAMES W. NARRON) SCHOOLED PROFESSIONAL ATTORNEIES AND NOW (T. YATES DOBSON JR.) U.S. DISTRICT JUDGE FOR THE IITH DISTRICT OF EASTERN NORTH CAROLINA , SMITHFIELD , N.C COURT HOUSE , SHELVA P. JOURNIGAN A BLANKET FACTORY WORKER , BY SUPPLYING THE DOCUMENTS OF WHICH THEY INDITED AND FILED ON RECORD , JUST TO GET THEIR HANDS ON THE REAL MONEY MAKER ,THE SUBDIVISION OF THE FARM . TWENTY THREE HOME BUILDING SITES, AND TWO COMMERCIAL PLOTS ,AS SHOPPING MALLS HAVE OR ARE BEING BUILT WITHIN APP. ONE AND ONE HALF MILE OF THIS PROPERTY , WITH THE DEVELOPMENT ACROSS THE STREET WITH HOUSES COSTING AS MUCH AS OR OVER (\$200.000) DOLLARS EACH . FURTHER THIS PROPERTY LIES IN A VERY HIGH AREA FOR ANOTHER SHOPPING MALL , AS THERE IS NO SHOPPING MALL ON THIS SIDE OF SMITHFIELD , N.C.

(6) THIS PROPERTY WAS BEING SUBDIVED BEFORE THE WILL WAS EVER PROBATED , AS OF JAN 24, 1988 THE SURVEY BEGAN , BY APRIL 6, 1988 THE PROPERTY WAS READY FOR RECORDING THE PLAT

(7) FOR THE SUBDIVISION , AS OF THIS DATE MR. JAMES W. NARRON WAS REINBURSED THE SUM OF THE ESTATES MONIES FOR THE SOIL TEST TO THE SUBDIVISION , OF WHICH HE HAD ORDER AND PAID FOR HIMSELF .

(8) . THAT IN DEFIANCE OF THE LAW , THE DEFENDENTS TOOK A VERY WILD CHANCE , AS TO THE MONIES THEY HOPED TO MAKE BY VIOLATING , VIOLATING STATURES 1017 AND 1021 OF TITLE 18 . ALSO SEE SECTION 241 , OF TITLE 18 , FURTHER SEE TITLE 18, STATURE 872,)(1951 -ACT OCT 31, 1951 AMENDMENT .

(8) THAT THIS ARGUMENT IS VERY PLAIN AND SIMPLE AND THE FACTS AND EVIDENCE LIES WITHIN REACH OF THE PETITIONER AND SHALL BE WITHIN THE HONORABLE COURTS REACH TO SUPPORT ANY AND ALL ACCOUNTS HEREIN STATED . FURTHER BY THE HONORABLE COURTS REQUEST THE PETITIONER WILL SUPPORT THESE ALIGATIONS WITHIN (TEN) DAYS FROM SAID REQUEST .

A P P E N D I X

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PARRISH V. JOURNIGAN ET AL ----- PAGES
LTH -CIR. C/A NO. 88-2945

JUDGMENT DATED MAY 4, 1989 IN THE
U.S. COURT OF APPEALS FOR THE LTH
CIR. PARRISH V. JOURNIGAN ET AL

C/A NO. 88-2945

AI-A5

ORDER ON PETITION FOR REHEARING
JUNE 5, 1989 IN THE U.S. COURT OF
APPEALS FOR THE LTH CIRCUIT ;

PARRISH V. JOURNIGAN-ET AL

A-6-A-7

C/A NO. 88-2945

ORDER DATED OCT.12,1988 GRANTING
SUMMARY JUDGMENT IN FAVOR OF DEFE-
-NDENTS , U.S. DISTRICT COURT HELD
IN WILMINGTON N.C. BY JUDGE FOX &
FILED IN RALEIGH OCT 13, 1988

C/A NO. 88-547-CIV-5

A-7-A-8-A-9

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 88-2945

DANIEL L. PARRISH

PLAINTIFF -APPELLANT

-V-

SHELVA P. JOURNIGAN :

BRUCE JOURNIGAN ;

T. YATES DOBSON JR. .

JAMES W. NARRON :

DEFENDENTS -APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA AT
RALEIGH. JAMES C. FOX ,DISTRICT JUDGE ,(C/A
NO. 88-547-5-CIV)

SUBMITTED JANUARY 10, 1989 DECIDED : MAY 4,
1989 .

DANIEL L. PARRISH ,APPELLANT PRO SE. WALTER
E. BROCK ,JR. (YOUNG,MOORE , HENDERSON &

PARRISH V. JOURNIGAN

ALVIS ,PA) , GARY S, PARSONS (BAILEY & DIXON)
FOR APPELLEES .

PER CURIAM :

DANIEL L. PARRISH APPEALS THE DISTRICT COURT'S DISMISSAL OF HIS SUIT SEEKING DAMAGES ALLEGEDLY ARISING FROM THE SETTLEMENT OF HIS DECEASED MOTHER'S ESTATE . THE DISTRICT COURT DISMISSED THE SUIT FOR FAILURE TO PROSECUTE BASED UPON PARRISH'S FAILURE TO ATTEND A PRE-TRIAL CONFERANCE . WE AFFIRM THE DISMISSAL, BUT FOR A REASON DIFFERENT FROM THAT ASSERTED BY THE DISTRICT COURT .

PARRISH ORIGINALLY FILED THIS SUIT IN THE EASTERN DISTRICT OF VIRGINIA ,BASING JURISDICTION ON DIVERSITY OF CITIZENSHIP, 28 U.S.C. STA. 1332 (A) , FOLLOWING TRANSFER OF THE ACTION TO THE EASTERN DISTRICT OF NORTH CAROLINA PURSUANT TO 28 U.S.C. STA. 1406(A), THE COURT ORDERED A PRETRIAL STATUS CONFERENCE IN ORDER TO CLARIFY PARRISH'S COMPLAINT. PARRISH RECEIVED NOTICE OF THE CONFERENCE BUT DID NOT SHOW UP.

PARRISH V. JOURNIGAN

PARRISH INSTEAD , HE WROTE A LETTER TO THE DISTRICT COURT ARGUING : INTER ALIA , THAT HE SHOULD NOT BE REQUIRED TO ATTEND THE CON-
- FERANCE BECAUSE ALTHOUGH THE CASE HAD BEEN . . . ASSIGNED TO THE RALEIGH DIVISION OF THE EASTERN DISTRICT OF NORTH CAROLINA UNDER LOCAL RULE 3.03 (A) THE CONFERENCE WAS SCHEDULED TO OCCUR IN THE WILMINGTON DIVISION . WHEN PAR-
- RISH FAILED TO APPEAR AT THE CONFERENCE , THE DISTRICT COURT DISMISSED THE ACTION " FOR FAILURE TO PROSECUTE ."

ALTHOUGH A DISTRICT COURT HAS THE AUTH-
- ORITY TO DISMISS A CASE FOR FAILURE TO PROS-
- ECUTE, SEE FED. R. CIV. P . 41 (B) , OR FOR FAILURE TO OBEY AN ORDER OF THE COURT REQU-
- IRING ATTENDANCE AT A PRETRIAL CONFERENCE , SEE FED .R. CIV. P. 16 (F) , 37 (B) (2)(C) . DISMISSAL WITH PREJUDICE * IS A HARSH SANCT-
- ION WHICH SHOULD NOT BE INVOKED LIGHTLY , SEE DAVIS V. WILLIAMS , 598 F. 2D 69 , 70 (4TH CIR. 1978) :

PARRISH V. JOURNIGAN

REIZAKIS V. LOY, 490 F.2D 1132 (4TH CIR.,

1974) WE EXPRESS OUR RESERVATIONS AS TO

THE PROPRIETY OF SUCH A SEVERE SANCTION IN
THE INSTANT CASE . HOWEVER, WE AFFIRM THE DIS-
MISSAL BECAUSE WE CONCLUDE THAT THE DISTRICT
COURT LACKED SUBJECT MATTER JURISDICTION
OVER PARRISH'S COMPLAINT .

IN PARRISH'S COMPLAINT , HE SOUGHT A DET-
-ERMINATION THAT HIS MOTHERS WILL WAS INVALID
DUE TO UNDUE INFLUENCE AND LACK OF TESTAMENT-
-ARY CAPACITY . HE ALSO SOUGHT REMOVAL OF THE
ATTORNEYS REPRESENTING THE ESTATE IN ONGOING
PROBATE PROCEEDINGS IN STATE COURT . AS THESE
MATTERS DIRECTLY IMPLICATE THE ADMINISTRATION
OF AN ESTATE , THEY FALL WITHIN THE EXCLUSIVE
JURISDICTION OF THE STATE PROBATE COURT .SEE

* AS THE ORDER DISMISSING PARRISH'S SUIT
DID NOT INDICATE WHETHER DISMISSAL WAS WITH
OR WITHOUT PREJUDICE , THE DISMISSAL IS DEE-
-MED TO BE WITH PREJUDICE ,SEE FED ,R. CIV. P.
41(B) ; BURTON V. AREA MAYFLOWER TRANSIT CO.

PARRISH V. JOURNIGAN

18 FED. R. SERV. 2D 342 , 343 , N. I (4TH CIR. 1974) .

MARKHAM V. ALLEN , 326 U.S. 490 . 494 (1946)

FOSTER V. CARLIN , 200 F. 2D 943 , 947 ,

(4TH CIR. 1952) , JOHNSTON V. STEVENSON ,

269 N.C. 200 , 152 S.E. 2D 214 (1967) .

THUS , THE DISTRICT COURT PROPERLY REFRAINED FROM EXERCISING JURISDICTION .

THE ORDER OF THE DISTRICT COURT IS AFFIRMED FOR THE REASON EXPRESSED ABOVE . THE ORDER IS MODIFIED TO REFLECT THAT DISMISSAL IS WITHOUT PREJUDICE . SEE 28 U.S.C. STA. 2106. WE DENY PARRISH'S MOTION FOR REMOVAL OF THE ATTORNEYS REPRESENTING GLADY'S PARRISH'S ESTATE IN STATE COURT . WE ALSO DECLINE TO INTERVENE IN THE ISSUE OF THE APPROPRIATENESS OF ATTORNEYS FEES IN THE STATE LITIGATION . FINALLY , WE DENY PARRISH'S MOTION THAT THIS COURT ORDER AN ACCOUNTING OF HIS MOTHER'S ESTATE . WE DISPENSE WITH ORAL ARGUMENT BECAUSE THE FACTS AND LEGAL CONTENTIONS ARE ADEQUATELY CONTAINED IN THE RECORDS AND ARGUMENT WOULD NOT AID THE DECISIONAL PROCESS .

PARRISH V. JOURNIGAN

AFFIRMED. AS MODIFIED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 88-2945

DANIEL L. PARRISH

PLAINTIFF - APPELLANT

- V -

SHELVA P. JOURNIGAN : BRUCE JOURNIGAN , T.
YATES DOBSON JR. , JAMES W. NARRON

DEFENDENT - APPELLEES

ON PETITION FOR REHEARING WITH SUGGESTION FOR
REHEARING IN BANC

ORDER

THE APPELLANT'S PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING IN BANC WERE SUBMITT-
-ED TO THIS COURT . AS NO MEMBER OF THIS COURT
OR THE PANEL REQUESTED A POLL ON THE SUGGESTION

PARRISH V. JOURNIGAN

FOR REHEARING IN BANC, AND

AS THE PANEL CONSIDERED THE PETITION FOR
REHEARING AND IS OF THE OPINION IT SHOULD BE
DENIED .

ENTERED AT THE DIRECTION OF JUDGE RUSSELL
WITH THE CONCURRENCE OF CHIEF JUDGE ERWIN AND
JUDGE WILKINSON . FILED JUNE 5, 1989 .

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

DANIEL L. PARRISH ,

PLANTIFF , (NO.88-547-CIV-5

-V-

(ORDER

SHELVA P. JOURNIGAN ,ET AL : (

(-----

DEFENDENTS .

ON SEPTEMBER 30, 1988, THIS MATTER WAS SET FOR
A STATUS CONFERENCE AT 4:00 P.M. ON TUESDAY ,
OCTOBER 11, 1988 , IN WILMINGTON , N.C. . PLANT-
-IFF WAS SO NOTIFIED BY NOTICE THEREOF FORWARD-
-ED TO HIM ON SAID DATE BY CERTIFIED MAIL,
ARTICLE NO. P. 674 647 806 , RETURN RECEIPT
REQUESTED . SAID NOTICE ADVISED PLAINTIFF

PARRISH V. JOURNIGAN

THAT HE WAS REQUIRED TO BE PRESENT AT THE STATUS CONFERENCE . THE RETURN RECEIPT INDICATES THAT NOTICE OF THE STATUS CONFERENCE WAS DELIVERED TO LOUISE PARRISH OCTOBER 3, 1988 .

THE STATUS CONFERENCE WAS SET IN ORDER THAT THE COURT MIGHT BE INFORMED OF THE EXACT NATURE OF PLAINTIFF'S COMPLAINT : IT BEING UNCERTAIN AS TO WHETHER PLAINTIFF , WHO APPEARS PRO-SE , IS CONTESTING THE VALIDITY OF A WILL WHICH IN THE SUBJECT OF CURRENT AND ONGOING PROBATE PROCEEDINGS IN THE STATE COURT .

ON OCTOBER 7, 1988 , PLAINTIFF FILED A DOCUMENT ENTITLED " STATUS CONFERENCE DENIAL" ASSERTING , AMONG OTHER THINGS , THAT THE REQUIREMENTS OF A STATUS CONFERENCE IS WITHOUT MERIT .

AS IN HIS PRIOR PLEADINGS , PLAINTIFF HAS NOT ARTICULATED HIS THOUGHTS IN A MANNER UNDERSTANDABLE TO THE COURT :

THE STATUS CONFERENCE CAME ON FOR HEARING AT THE APPOINTED TIME AND PLACE AS SET FORTH IN THE NOTICE THEREOF . -

PARRISH V. JOURNIGAN

COUNSEL FOR DEFENDENTS DOBSON AND NARRON WAS
PRESENT . PLAINTIFF , HOWEVER , FAILED TO APP-
-EAR AS DIRECTED . BECAUSE OF PLAINTIFF'S FAI-
-LURE TO APPEAR , THIS MATTER IS DISMISSED
FOR PLAINTIFF'S FAILURE TO PROSECUTE THE
SAME .

SO ORDERED . CASE NO.88-547-CIV-5

THIS 12TH DAY OF OCTOBER , 1988

JAMES C. FOX

UNITED STATES DISTRICT JUDGE



CONCLUSION

THE SUBJECT OPINION'S CHILLING EFFECT ALTERS THE RIGHTS THAT ACCOMPANY SEPERATE CLAIMS OUTSIDE OF AN ESTATE OR OUTSIDE OF A STATE WHICH DEMONSTRATES THE TRUE NEED FOR A WRIT OF CERTIORARI .

SHOULD THE U.S, COURT OF APPEALS , FOR THE FOURTH CIRCUIT , GIVE NORTH CAROLINA COURTS THE SAME ADMINISTRATIVE ADVANDAGES AS IF THERE STATE COURT SAT ON VIRGINIA SOIL , AND DISMISS THE COMPLAINT ON MATTERS CONTAINED IN THE STATE COURT OF NORTH CAROLINA SMITHFIELD , N.C. CONCERNING THE PROBATE ACTION , AND THE CAVEATERS ACTION MONTHS AFTER THE PETITIONER FILED HIS COMPLAINT .

THE ANSWER MUST ASSUREDLY BE NO , NOT ANYMORE THAN DANIEL L. PARRISH SHOULD HAVE TO BRING HIS PERSONAL CLAIMS AS AND ESTATE MATTER TO (SMITHFIELD ,N.C.) .

THE PETITIONER ,STRONGLY SUGGESTS THE REASON FOR THE WRIT SHOULD BE TWOFOLD.

FIRST , THE OPINION ABROGATES THE VIRGINIA SCOPE OF THE LAW . THE STATURE DOES NOT ALLOW VIRGINIA COURTS TO FAVOR OUT OF STATE COURT OF WHICH ARE LITIGATED IN STATE OPERATED COURTS , BY OUT OF STATE LAWYERS OF WHICH WOULD FURTHER BENEFIT THE DEFENDENTS .

SECOND : THESE AND OTHER INDIVIDUAL RULES AND STATURES IMPROPERLY APPLIED CITED IN THE OPINIONS SHORTENING THE VARIOUS RULES OF PROCESS AND PROCEDURES THAT MUST BE ELEMENTINATED FOR EQUAL PROTECTION OF THE LAW AS REQUIRED UNDER THE (5TH & 14TH) AMENDMENT TO THE U.S. CONSTUTION.

THE QUESTIONS TO BE ANSWERED AND FOR REVIEW IN THIS PETITION IS THAT THE FOURTH CIRCUIT COURT OF APPEALS FAILED TO DISTINGUISH THE PERSONAL CLAIMS MADE BY THE PETITIONER FROM THOSE CLAIMS MADE BY THE DEFENDENTS .

THE CLAIMS OF THE PETITIONER ARE DIFFERENT FROM THE CLAIMS OF THE CAMEATORS .

THE PETITIONERS COMPLAINT ,IS SUPPORTED
UNDER DIFFERENT LAWS, DIFFERENT FACTS , AND
EVIDENCE FROM THE STATE COURT CAVEATORS ACT-
-ION OF WHICH PETITIONER HAD NO PART . BUT
SUREDLY , THE (RES JUDICATA) EFFECT MUST
NOT APPLY TO THE STATE COURT ACTION , AS THE
REPRESENTIVE COURT HOUSE SITS ON OUT OF
(STATE SOIL)

THAT THE BOUNDERIES AND SOIL CONSTITUTIO-
-NAL LAWS FORBIDS AGREEMENTS OR CONTRACT
TO BE ENTERED INTO BY DIFFERENT STATES ,

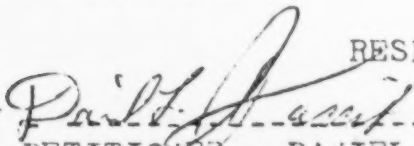
THAT BY CONSTITUTIONAL LAW THE 4TH CIR-
-CUIT COURT OF APPEALS HAS SURRENDERED TO
BASES OF LAW THAT ARE WELL WITHIN THEIR
POWER TO SERVE FOR CITIZEN'S OF VIRGINIA
IN FAVOR OF OUT OF STATE DEFENDENTS .

THE PETITIONER , DANIEL L. PARRISH ,
COMPLAINT IS SUPPORTED BY THE STATE BOU-
-NDRIES OF LAW , CONCERNING , JUDGE FOX'S
ORDER DISMISSING OF FEDERAL COMPLAINT NO.
88-547-CIV-5 , IN WILMINGTON ,N.C. OCT 12,
1988 IN FAVOR OF THE DEFENDENTS .

THE AFFIRMING BY MODIFICATION , BY THE U.S.
11TH CIRCUIT COURT OF APPEALS , SURELY , MUST
DIMINSTRATE , BY WAY OF CONSTITUTIONAL LAW
THAT THE COURT'S OF INSTANCE (NEITHER) HAD
STATE OR FEDERAL JURISDICTION IN NORTH CARO-
-LINA AS SET BY THE RULES OF THIS NATION ,
FOR DUE PROCESS.

AS THE PETITIONERS MAIL WAS MONITORED AND
REPORTED TO THE POSTAL SERVICES , RIPPED OPEN
AND RESEALED WITH SCOTCH TAPE , AND RECEIVED
SEVERAL DAYS AREAR FROM THE DELIVERY TIME SET
BY THE POSTAL SERVICE , IT COULD VERY WELL BE
THE HONORABLE COURT JUSTICE'S OF THE 11TH CIR.
DID NOT RECEIVE ADACATE DOCUMENTS TO GIVE A
DECISION ADAQUATELY TO THE PLAINTIFF .

THE PETITIONER FIRMLY BELIEVES THIS HON-
-ABLE COURT SHOULD GRANT THE WRIT OF CERTIORARI
AND THE CLAIMS OF SUBSTANCES BE GRANTED TO
THE PETITIONER .

RESPECTFULLY - SUMMITTED
BY 

PETITIONER - DANIEL L. PARRISH -PRO-SE
8512 CULFOR CRESCENT
NORFOLK, VA. 22503
PH. (404) 588-5369

STATEMENT -OF - THE - CASE

-

THE PETITIONER , DANIEL L . PARRISH BROUGHT
SUIT IN THE U.S DISTRICT COURT FOR THE EASTERN
DISTRICT OF VIRGINIA , NORFOLK DIVISION , APRIL
28, 1988 / C/A. NO. 88-302-N AFTER REPEATED
PHONE CALL, LETTERS , AND ANYTHING THE OTHER
HEIRS COULD GET THEIR HANDS ON .

THE HEIRS THAT LIVED WITHIN THE AREA, SMITH-
-FIELD , N.C. COULD NOT EVEN EMPLOY THEM AN
ATTORNEY AS THE DEFENDENT , T. YATES DOBS-
-ON JR. WAS AT THIS TIME RUNNING FOR II TH
DISTRICT JUDGESHIP AND WAS ONE OF THE FOUR
DEFENDENTS IN THE COMPLAINT THAT LIVED IN
SMITHFIELD , N.C. AREA .

THE ATTORNIES REPRESENTING THE DEFENDENTS
IN VIRGINIA , M. WAYNE RINGER , P.O. BOX
3416 , NORFOLK, VA, 23514 , REPRESENTING MR.
T. YATES DOBSON JR. & JAMES W, NARROW . &
COUNSEL FOR (SHELVA P. JOURNIGAN & BRUCE
JOURNIGAN & JOHN Y. PEARSON & JILL M. MAYO.

1800 SOVRAN CENTER , NORFOLK, VA. 23510-2197

M. WAYNE WRINGER , 600 CRESTAR BANK BUILD-
-ING , P.O . BOX . 3416 , NORFOLK, VA, 23514-3416

THE AFORESAID LAWYERS , POUNDED THE COURT
FOR DISMISSAL FOR APP- THIRTY DAYS WITHOUT
ANY SUCCESS , AND THEN MODIFIED THEIR REQ-
-UEST TO A TRANSFER , THE TRANSFER COULD NOT
BE OBTAINED , SO THE LAWYERS IN SMITHFIELD.
N.C. THROUGH AND BY W.A. HOLLAND JR. , MADE
WAY FOR TRANSFER BY SUGGESTING TO THE CAVEA-
-TORS , THAT HE COULD GET THE WILL THAT WAS
PROBATED THROWN OUT AS IT WAS NOT THE WILL OF
WHICH (ASS. CLERK . PAULETTE STEWART) HAD
SHOWN , VERNON L. PARRISH , BARNEY P. PARRISH
AND RUBY BRADY THE EARLER PART OF THE AFTER-
-NOON OF GLADYS L. PARRISH'S DEATH .

THE ACTION WAS ENTERED INTO THE COURT AND
SET FOR TRIAL BY (WILL R. CROCKER) CLERK OF
OF COURT OF JUSTICE , SUPERIOR COURT DIVISI-
-ON . THE CASE WAS FILED IN SMITHFIELD , N.C.
JUNE , 7, 1988 .

THE CAVEATORS CASE WAS FILED JUNE 7, 1988 &
A COPY IMMEDIATELY MAILED TO M. WAYNE RINGER
COUNSEL FOR THE DEFENDENTS IN NORFOLK, VA. THE
CLERK MAILED A LETTER TO MR RINGER STATING THE
COMPLAINT HAD BEEN REFERRED TO JUDGE MCKENZIE
ON THE PENDING MOTIONS ON BEHALF OF SHELVA
P. JOURNIGAN ET AL .

MR. RINGER BY LETTER TO JUDGE MCKENZIE
DATED JUNE 16, 1988 STATED THE PETITIONER
RELIED ON THE (RACKETEER INFLUENCE AND COR-
RUPT ORGANIZATION ACT). FURTHER BY THIS LET-
TERS LAST PARAGRAPH (FINALLY , LAST WEEK THREE
OF MR PARRISH'S AND MS, JOURNIGAN'S SIBLINGS
FILED A SUIT TO CONTEST MRS PARRISH'S WILL
IN THE NORTH CAROLINA STATE COURT IN SMITH-
FIELD . A COPY OF THE " CAVEAT " IS ENCL-
-USED . PLAINTIFFS IN THIS SUIT ARE REPRESE-
-NTED BY COUNSEL , AND IT IS SUBMITTED THAT
LITIGATION OF THESE MATTERS SHOULD MORE PROP-
-ERLY PROCEED IN THAT ACTION AND NOT HERE .

THE, VERY NEXT DAY THE PLANTIFF RECEIVED A MEMORANDUM ORDER FROM JUDGE McKENZIE FROM THE U.S. DISTRICT IN NORFOLK, VA, GIVING THE PLANT-
-IFF TEN DAYS TO REQUEST A TRANSFER OR THE CASE WOULD BE DISMYSSSED . THE REQUEST WAS RETURNED TO THE COURT AND JUDGE McKENZIE TRANSFERED THE CASE TO THE U.S DISTRICT COURT EASTERN NORTH CAROLINA , DATED JULY 1, 1988 RALEIGH DIVISION C/A NO. 88-547-CIV-5, FURTHER WITHIN THE ORDER OF TRANSFER BY JUDGE McKENZIE SPECIFIED THAT (SERIOUS QUESTION) LAY IN THE NORTH CAROLINA COURTS OF WHICH SHOULD BE ANSW-
-ERED BY THE DEFENDENTS .

THE PLANTIFF MAILED A PETITION TO THE U.S. DISTRICT COURT EASTERN DISTRICT , RALEIGH DIVIS-
-ION AUG: 8, 1988 ASKING FOR THE DEFENDENTS TO ANSWER THE INTERROGATORIES , OF WHICH (NO) REPLY FROM THE COURT WHATSOEVER ,

SEPTEMBER 6, 1988 THE PLANTIFF SENT WRITS TO THE U.S. DISTRICT COURT , RALEIGH DIVISION THE THREE WRITS WERE SENT TO , RECEIVE ANSW-
-ERS.

CONCERNING THE DEATH OF GLADYS L. PARRISH AT
REX HOSPITAL ,AS THE INFORMATION WAS NOT AVAIL-
-ABLE THROUG^H SMITHFIELD ,N.C. AS THE CLERKS
WOULD NOT LET YOU SEE ANYTHING CONCERNING THE
ESTATE OF GLADYS L. PARRISH ALTHOUGH IT WAS
SUPPOSED TO BE PUBLIC RECORD .

THE WRITS WERE REVIEWED AND APPEALED BY
MAGISTRATE THE VERY SAME DAY AS THE ORDER WAS
SIGNED FOR WALTER E. BROCK JR. BY J. RICH LeO-
-NARD CLERK , AS MAGISTRATE DATED AUG 31,1988 .
THE WRITS WERE (NOT) MAILED TO THE COURT.

SEPTEMBER 6,1988 , THEREBY THE WRITS SUMMITTED
TO THE U.S DISTRICT COURT WERE REVIEWED AND
APPEALED SIX (6) DAYS BEFORE THE PLAINTIFF SENT
THEM INTO THE COURT , FURTHER THE PLAINTIFF,
SENT A SELF ADDRESSED , PREPAID POSTAGE TO J.
RICH LEONARD TO RETURN SAID COPIES TO PLANT-
-IFF AFTER THEY WERE FILED (NO REPLY).
SAID WRITS AND PROCEEDING SHEET WILL VERIFY
THE FACT HEREIN STATED . THE CASE WAS TRIED
IN SMITHFIELD ;N.C. AND FOUND IN FAVOR OF
THE DEFENDENTS OCT 5,1988 SUMMITTED BY
W.A. HOLLAND JR. A SMITHFIELD ATTORNEY .

THE PLAINTIFF HAD RECEIVED A STATUS CONFERENCE NOTICE FROM J. RICH LEONARD DATED SEPTEMBER 30, 1988 ON OCT 3, 1988 THAT A STATUS CONFERENCE WAS TO BE HELD IN WILMINGTON ,N.C , APP. 235 MILES FROM THE PLAINTIFF FORUM AND (135) MILES FROM RALEIGH ,N.C WHERE THE ACTION WAS TRANSFERED TO BY JUDGE JOHN MCKENZIE OF THE U.S. DISTRICT COURT , IN NORFOLK,VA, THE PLAINTIFF RETURNED A LETTER TO J. RICH LEONARD AND A COPY TO JUDGE JAMES C. FOX , THAT NO JURISDICTION LAY WITHIN THE WILMINGTON N.C. COURT AND THAT I WOULD NOT ATTEND THE MEETING . FILED TO RECORD BY J. RICH LEONARD OCT 7, 1988 AS CLERK .

THE ORDER DISMISSING THE PLAINTIFF COMPLAINT STATED ONLY COUNSEL FOR DEFENDENTS DOBSON AND NARRON APPEARED , AT THE PREFERRED TIME LEAVING DEFENDENTS COUNSEL (WALTER E. BROCK JR) (ABSENT) FROM THE HEARING , DATED OCT 12, 1988 AND FILED IN RALEIGH ,N.C. ALTHOUGH THE CONFERENCE WAS SUPPOSED TO HAVE BEEN HELD IN WILMINGTON ,N.C. AT 4 . P. M . FILING DATE SHOWN OCT 13, 1988 BY J. RICH LEONARD AS CLERK, CASE NO 88-547-CIV-5

PLANTIFF - PETITIONER ,APPEALED THE DECISION
BY JUDGE JAMES C, FOX'S DISMISSAL ORDER SECURED
BY THE STATUS CONFERACE HELD IN WILMINGTON ,N.C.
OCT II, 1988 AT (4..00 - P. M .) SIGNED ORDER
OCT 12, 1988 AND FILED IN RALEIGH ,N.C OCT 13,
1988 . CASE NO. 88-547-CIV-5

THE APPEAL WAS SUMITTED TO THE U.S. COURT OF
APPEALS FOR THE 4TH CIRCUIT JANUARY 10,1989 .
CASE NO. 88-2945 .

BY THE APPEAL AND TRANSFER OF THE CASE REVEALED
BILLING BY (JAMES W. NARRON) AS MUCH AS ELEVEN
(II) HOURS A DAY FOR HIS SERVICES , JAMES W.
NARRON HAD FOUR (4) LONG DISTANCE PHONE CON-
-FERANCES WITH JUDGE WILEY F. BOWEN DURING
THE PREPORATIONS OF THE TRIAL CONCERNING THE
WILL PROTESTED BY THE THREE CAVEARORS TO BE
HEARD BY HIM IN SMITHFIELD ,N.C. FURTHER
MR. NARRON ENTERED A NOTICE TO THE COURT TO
BE APPROVED BY (JUDGE WILEY F. BOWEN) AT
12: 15 -P.M. , DECEMBER 5,1988 FOR (EIGHT
THOUSAND FOUR HUNDRED AND EIGHTEEN DOLLARS TO
BE PAID OUT OF THE ESTATE FUNDS . (\$8,418.00)
AND AFFADAVIT SUMMITTED TO THE COURT BY (L,
AUSTIN STEVENS , STATING , THE BILL WAS FARE
PRICED

B-7.

THAT THE PETITIONER ENTERED A (STAY AND OPOSITION TO ATTORNEE FEES PRESENTED TO JUDGE WILEY F. BOWEN IN SMITHFIELD ,N.C. TO THE U.S. COURT OF APPEALS FOR THE 4TH CIRCUIT . NO. REPLY FROM THE 4TH CIRCUIT . FURTHER WITHIN THIS PETITION THE PLAINTIFF REQUESTED THE HONORABLE COURT TO (REINSTATE) THE ADVANCED LIEN AND WRIT OF INJUNCTION AGAINST ALL DEFENDENTS . CERTIFIED AND MAILED (APRIL 1988) DOCUMENTS BY THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA (NORFOLK DIVISION) APPROVED BY THE HONORABLE JUDGE JOHN MCKENZIE .

THE PETITION WAS NOT REVIEWED ,APPEALED WAS IT GRANTED TO THE PLAINTIFF . FURTHER NARRON'S APPROVAL OF ATTORNEE FEES WERE GRANTED AND ON DECEMBER 13,1988 THERE WAS A DISBURSEMENT TO MR. JAMES W, NARRON IN THE AMOUNT (\$8,418 . 00) FROM THE ESTATES ACCOUNT. FURTHER THAT ON NOVEMBER 21,1988 THERE WAS ANOTHER DISBURSEMENT TO (WILL R. CROCKER CLERK OF SUPERIOR COURT FOR (\$4,500.00) FROM THE ESTATES ACCOUNT.

THE PETITIONER ENTERED AN ACCOUNT ORDER TO
THE FOURTH COURT OF APPEALS AGAINST SHELVA P.
JOURNIGAN & JAMES W. NARRON FOR AN ACCOUNTING
OF THE ESTATES FINANCES AND FOR A SHOWING OF
THE PROCEEDURES BEING USED TO SETTLE THE ES-
-TATE .(:NO REPLY :)

PETITIONER ENTERED A (STATEMENT OF ACCOUNT
ORDER.) FOR ACCOUNTING RECORDS OF REX HOSPITAL'S
ACCOUNTING DEPT , RALEIGH ,N.C.(NO. REPLY)
" FURTHER " THE STATEMENT OF ACCOUNT ORDER FOR
REX HOSPITAL WAS NOT EVEN ENTERED BY THE COURT
IN THE AFFIRMING AND DISMISSING OF THE CASE
DATED MAY 4,1989 AND DECIEDED ON BY (CHIEF
JUDGE ERWIN , CIRCUIT JUDGE RUSSELL AND WILK-
-INSON .

THE PETITIONER ON APRIL 12,1989 MAILED (9)
CANCELED CHECKS FOR PAYMENT OF INSURANCE POLI-
-CIES FOR THE EXERATRIX , THE MONIES DERIVED
FROM THE (WILL AND DOWERS POWER OF ATTORNEY)
BY.T. YATES DOBSON JR. COPIES OF THE SURVEYING
OF THE FARM INTO TWENTY THREE HOME BUILDING
SITES , TWO COMMERCIAL SITES , AND PICTURES
OF HOMES BUILT DIRECTLY ACROSS THE STREET .

PETITIONER ENTERED DOCUMENTS TO THE SAID COURT
FOR THE FOURTH CIRCUIT , SHOWING THE ESTATE LAW-
-YER JAMES W. NARROW AND SHELVA P. JOURNIGAN WERE
SQUANDERING THE ESTATES MONIES BY IT, APPEARED
DIVIDING THEMSELVES SHARES BY DISBURSEMENTS,

THE PETITIONER REQUESTED A STATUS REPLY
FROM THE CLERK OF THE U.S. COURT OF APPEALS ,
OF WHICH WAS NOT RECEIVED BY PLAINTIFF . THE
REQUEST WAS SENT TO (KELLI AYN COSTAIN)
DEPUTY CLERK , U.S . COURT OF APPEALS FOR THE
FOURTH CIRCUIT , UNITED STATES COURT HOUSE ,
TENTH & MAIN STREETS RICHMOND , VA, 23210

" NO REPLY "

WITHOUT ANY REPLY TO THE PLAINTIFF -PETIT-
-IONER FROM THE 4TH CIRCUIT FROM JAN. 10,
1989 UNTIL (CHIEF JUDGE ERWIN , AND RUSSELL
AND WILKINSON , CIRCUIT JUDGES , AFFIRMED AS
MODIFIED DISMISSED THE COMPLAINT . ALTHOUGH

ALL PERTIENT FACTS LAY WITHIN THEIR HANDS .

AFFIRMED AS MODIFIED , MAY 4, 1989

FILE NO. 88-2945

89-361

Supreme Court, U.S.

FILED

SEP 25 1989

JOSEPH F. SPANIOL, JR.
CLERK

NO. 89-369

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

DANIEL L. PARRISH, Petitioner

v.

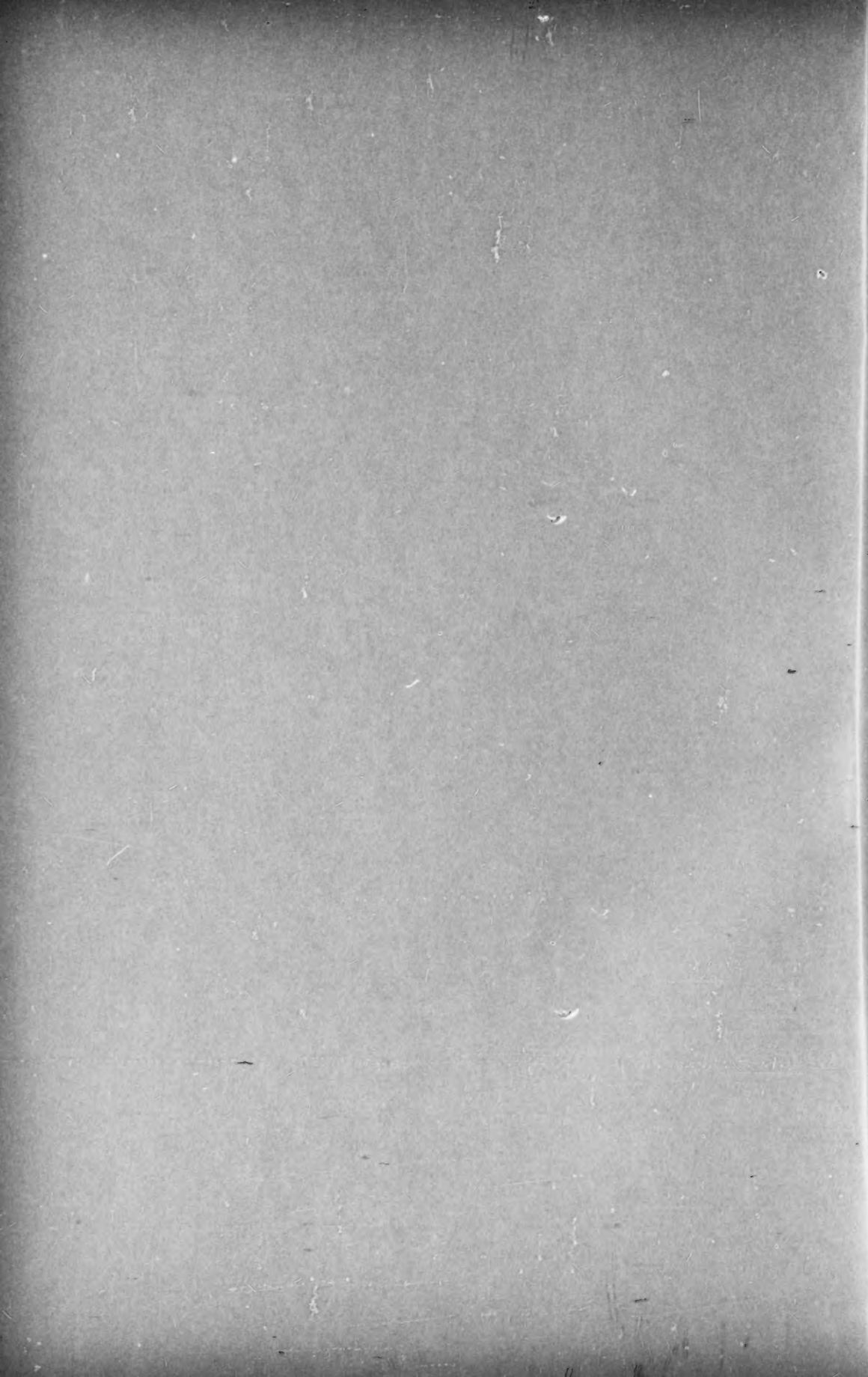
SHELVA P. JOURNIGAN, BRUCE G.
JOURNIGAN, T. YATES DOBSON, JR.,
JAMES W. NARRON, Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS
DOBSON AND NARRON

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21/92



QUESTION PRESENTED

Whether the United States Court of Appeals for the Fourth Circuit erred in determining that the district court lacked subject matter jurisdiction over an action to determine the validity of a will and to contest the administration of a decedent's estate?

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No. 89-369

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

DANIEL L. PARRISH, Petitioner

V.

SHELVA P. JOURNIGAN, BRUCE G.
JOURNIGAN, T. YATES DOBSON, JR.,
JAMES W. NARRON, Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS
DOBSON AND NARRON

JURISDICTIONAL GROUNDS

Petitioner, a Virginia resident, brought this action in federal court against four North Carolina residents. Jurisdiction was founded on diversity of citizenship. 28 U.S.C. §1332(a)(1982).

STATEMENT OF THE CASE

Petitioner's Complaint seeks compensatory and punitive damages stemming out of the Respondents' involvement with the probate of Petitioner's mother's will and the administration of her estate. Mr. Dobson, an attorney, drafted a durable power of attorney and a will for Petitioner's mother. The will left the bulk of the estate to one of Petitioner's siblings. Mr. Narron, an attorney, has represented Shelva Journigan in her capacity as executrix of the estate. Mr. Narron also represented the estate in the caveat proceeding heard in State court

during the pendency of this action.¹

On Petitioner's motion, the case was transferred from Virginia to the United States District Court for the Eastern District of North Carolina to avoid dismissal for lack of personal jurisdiction. The matter was then assigned to the Honorable James C. Fox. A status conference was scheduled for October 11, 1988, in Wilmington, North Carolina, where Judge Fox's chambers are located. Written notice to attend was given to all parties, but Petitioner refused to appear. Judge Fox, on his own motion, dismissed the action under F.R. Civ. P. 41 for this failure by Petitioner to prosecute his claims.

Petitioner appealed this ruling to the United States Court of Appeals for the

¹ The jury determined that the will was valid. Petitioner was a named party to the caveat proceeding.

Fourth Circuit. The Fourth Circuit affirmed Judge Fox's dismissal on grounds that the federal court lacked subject matter jurisdiction over Petitioner's claims. The Fourth Circuit modified the Order to reflect that the dismissal was without prejudice, pursuant to 28 U.S.C. §2106 (1982).

Petitioner filed a petition for rehearing and suggestion on rehearing en banc with the Fourth Circuit, which was denied on June 5, 1989. Petitioner then filed a Petition for Writ of Certiorari with the United States Supreme Court.

SUMMARY OF ARGUMENT

Matters of probate and estate administration are beyond the subject matter jurisdiction of the federal courts. The Complaint requests relief arising out of the probate of a will and administration of an estate and these matters fall within the exclusive

jurisdiction of the North Carolina courts. The Fourth Circuit correctly dismissed the Complaint for lack of subject matter jurisdiction. In addition, Petitioner's claims against Mr. Dobson and Mr. Narron are frivolous and will be dismissed if this case is heard on the merits by a Court of competent jurisdiction.

REASONS WHY THE PETITION
SHOULD BE DENIED

1. Federal Law is Clear that Matters Regarding the Validity of a Will and the Administration of an Estate are Beyond Federal Subject Matter Jurisdiction.

The Supreme Court reserves its Writs of Certiorari to reach cases that present matters of gravity and general importance. Fields v. United States, 205 U.S. 292, 296, 27 S. Ct. 543, 51 L. Ed. 807 (1907). The number of cases this Court can address each year is limited. Thousands of cases are presented for review posing issues affecting the welfare of all United States citizens. This is not such a case.

Writs of Certiorari are issued to resolve conflicts between state and federal courts or among different federal courts. Sup. Ct. R. 17. The law has long been settled that, in diversity cases, jurisdiction over matters of probate and estate administration rests exclusively with state courts. Markham v. Allen, 326 U.S. 490, 494, 66 S. Ct. 296, 90 L. Ed. 256 (1946); Reiss v. Reiss Foundation, 610 F.2d 471, 475 (7th Cir. 1979).

Petitioner's Complaint alleges that undue influence and lack of testamentary capacity invalidate his mother's will. See Parrish v. Journigan, No. 88-2945, slip op. at 3 (4th Cir. May 4, 1989). The validity of the will is within the exclusive jurisdiction of the court in the county where Petitioner's mother resided at the time of her death. Markham, 326 U.S. at 494. See N.C. Gen. Stat. §§28A-2-1, 28A-3-1, 31-32 (1984 & Supp. 1988)

(discussing jurisdiction over probate matters); In Re Estate of McAdamee, 291 N.C. 386, 395, 230 S.E.2d 541, 549 (1976) (clerk has exclusive original jurisdiction over probate); Walters v. Baptist Children's Home of N.C., Inc., 251 N.C. 369, 377, 111 S.E.2d 707, 713 (1959) (clerk's probate is conclusive unless overturned on appeal to Superior Court). The Complaint also alleges that the executrix of the estate and the attorney representing her have acted improperly in conducting the estate's affairs. See Parrish v. Journigan, No. 88-2945, slip op. at 3 (4th Cir. May 4, 1989). This issue, too, is beyond federal jurisdiction. Markham, 326 U.S. at 494.

The issues that Petitioner can raise have been litigated repeatedly, and in each case the reviewing court has determined that it lacked subject matter jurisdiction. See, e.g., Smith v. Smith,

272 F. Supp. 397, 399-400 (W.D. Va. 1967) (determination whether stock is part of decedent's estate is outside federal jurisdiction). See also Waterman v. Canal-Louisiana Bank & Trust Co., 215 U.S. 33, 45, 30 S. Ct. 10, 54 L. Ed. 80 (1909) (right to accounting is matter for state probate court).

In Blackney v. Blackney, 664 F.2d 433 (5th Cir. 1981), six beneficiaries filed a diversity action, claiming that a state probate judgment was invalid because the testator lacked the capacity to make a will and because fraud existed in the estate administration. Id. at 433-34. The district court dismissed the Complaint for lack of subject matter jurisdiction and the plaintiffs appealed. Id.

The Fifth Circuit ruled that plaintiffs' claim concerning the testator's capacity went to the validity of the will and was outside federal

jurisdiction. Id. at 434. The remaining claims concerned matters within the scope of the probate proceeding and had already been adjudicated by the probate court.

Id. The Fifth Circuit ruled that the federal court lacked subject matter jurisdiction over these claims. Id.

The Fourth Circuit's decision is in accord with decisions of the numerous Circuits that have addressed this issue. Granting a Writ of Certiorari here will preclude the Court from addressing important issues, only to review and apply a well-settled jurisdictional doctrine.

2. Petitioner's Claims Against
Mr. Narron and Mr. Dobson
are Meritless.

Petitioner has sued Mr. Dobson for drafting a valid will and a valid power of attorney that Petitioner, a disgruntled heir, does not like. North Carolina does not recognize a claim against an attorney for following his client's directions in

drafting documents. See Hodges v. Carter, 239 N.C. 517, 520, 80 S.E.2d 144, 145-46 (1954) (attorney is liable only for failure to exercise reasonable care or his best judgment on behalf of his client). North Carolina also does not recognize a claim against an attorney representing an estate for maximizing estate assets, although a disgruntled beneficiary disagrees with the decisions made. It is the executrix, not the beneficiaries, who decides how to manage estate assets. See N.C. Gen. Stat. §28A-13-3 (1984 & Supp. 1988) (listing duties and powers of executrix). Mr. Dobson and Mr. Narron have competently represented their clients. Petitioner's claims against them are baseless. This suit does not merit Certiorari to prolong claims that will be dismissed below. Mr. Dobson and Mr. Narron should not be required to litigate Petitioner's baseless claims further.

3. Petitioner Could Have Contested
the Will and the Estate
Administration in a Proper Forum.

Petitioner had his opportunity for a day in court. He was a named party to the caveat proceeding filed by his brothers and sisters in Johnston County Superior Court. See, e.g., Petitioner's Questions Presented Nos. 15-16, 42, 53. Petitioner opted not to appear at that proceeding, although the Johnston County courts obtained jurisdiction over this matter three months before Petitioner filed his Complaint.² Further, all accountings

² North Carolina assumed jurisdiction over the estate, the res of Petitioner's Complaint, when the will was submitted for probate on January 25, 1988. Petitioner sought relief from the federal court during the pendency of the State action that necessarily would have interfered with the State's possession of the estate. This is another reason to dismiss. See Princess Lida of Thurn and Taxis v. Thompson, 305 U.S. 456, 466, 59 S. Ct. 275, 83 L. Ed. 285 (1939) (federal court has no jurisdiction over res in possession of state court); Cottingham v. Hall, 55 F.2d 664, 665 (4th Cir. 1932) (same).

must be approved by the Johnston County Clerk of Superior Court and fees, including attorneys fees paid, must be approved by the Clerk. See N.C. Gen. Stat. §§28A-21-1, 28A-21-2, 28A-23-3(e) (1984). The federal court has no jurisdiction to exercise those powers vested, by statute, exclusively with the Clerk. Petitioner could have contested these issues in Johnston County.

To fix liability in Petitioner's lawsuit, a court or jury must determine whether Petitioner's mother's will is valid and whether her estate was administered properly. Only the North Carolina courts can rule upon these issues in the context that Petitioner presents them. Petitioner's action directly interferes with estate administration; therefore, his claims were properly dismissed by the Fourth Circuit.

CONCLUSION

The Petition for Writ of Certiorari presents neither a special nor important issue of law. Petitioner asks this Court only to review his self-serving account of the facts surrounding his mother's death. This Court will not grant a Writ of Certiorari merely to review evidence or discuss specific facts. United States v. Johnson, 268 U.S. 220, 227, 45 S. Ct. 496, 69 L. Ed. 925 (1925). The law concerning federal subject matter jurisdiction is clear and has been consistently and fairly applied in this case. This Court should refuse to issue its Writ of Certiorari and should allow the Fourth Circuit's opinion to stand.

Respectfully submitted, this the 21st
day of September, 1989.

BAILEY & DIXON

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By: Dorothy V. Kibler
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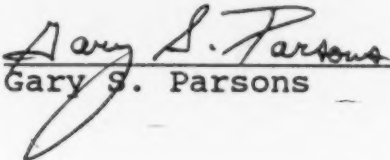
CERTIFICATE OF SERVICE

The undersigned attorney for Respondents Dobson and Narron hereby certifies that on this day three copies of the foregoing Brief in Opposition of Respondents Dobson and Narron was served upon the parties in this action by depositing them in an appropriate wrapper, in a United States post office or mailbox, with first-class postage prepaid, and addressed as follows:

Daniel L. Parrish
8512 Culfor Crescent
Norfolk, Virginia 23502

Walter E. Brock, Jr.
Young, Moore, Henderson & Alvis, P.A.
Post Office Box 31627
Raleigh, North Carolina 27622-1627

This the 21st day of September, 1989.



Gary S. Parsons

89-361

3

Supreme Court, U.S.
FILED

SEP 25 1989

JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. 89-369

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

DANIEL L. PARRISH, Petitioner

vs.

SHELVA P. JOURNIGAN, BRUCE G.
JOURNIGAN, T. YATES DOBSON, JR.
JAMES W. NARRON, Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION OF
RESPONDENTS SHELVA P. JOURNIGAN
AND BRUCE G. JOURNIGAN

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13 pp

QUESTIONS PRESENTED

- I. WHETHER SPECIAL AND IMPORTANT REASONS
EXIST TO WARRANT THIS COURT'S REVIEW
ON PETITIONER'S WRIT OF CERTIORARI.
- II. WHETHER THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT ERRED
IN DETERMINING THAT THE DISTRICT COURT
LACKED SUBJECT MATTER JURISDICTION
OVER PETITIONER'S COMPLAINT.

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CASE NO. 89-369

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

DANIEL L. PARRISH, Petitioner

vs.

SHELVA P. JOURNIGAN, BRUCE G.
JOURNIGAN, T. YATES DOBSON, JR.
JAMES W. NARRON, Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION OF
RESPONDENTS SHELVA P. JOURNIGAN
AND BRUCE G. JOURNIGAN

JURISDICTIONAL STATEMENT

Petitioner, a Virginia resident, brought this action in the United States District Court against four North Carolina residents. The jurisdictional grounds claimed by Petitioner appear to include diversity of citizenship, 28 U.S.C. §1332(a) and federal question, 28 U.S.C. §1331, although Respondents submit that neither claimed basis supports federal jurisdiction.

STATEMENT OF THE CASE

Petitioner's Complaint as to Respondents Journigan sought damages and a determination that his mother's will was invalid due to undue influence of these Respondents and lack of testamentary capacity. The Petitioner's Complaint also alleges that the Executrix Shelva Journigan acted improperly in conducting the estate's affairs. Petitioner was a

named party to a caveat proceeding relating to the subject will in the North Carolina General Court of Justice, Superior Court Division, Johnston County, yet he did not appear at the proceedings. The jury determined that the will was valid. An accounting for all receipts and disbursements is subject to approval by the Clerk of Superior Court.

The Statement of the Case by Respondents Dobson and Narron is incorporated herein by reference as to the remaining proceedings relating to the Petition.

SUMMARY OF ARGUMENT

Special and important reasons do not exist to warrant this Court's review on the Petition for Writ of Certiorari. The Petitioner's complaint pertains to matters of probate and estate administration which are outside the scope of federal jurisdiction and which fall within the

exclusive jurisdiction of the state probate court. The Fourth Circuit's ruling so holding is overwhelmingly supported by the applicable authorities.

ARGUMENT

I. SPECIAL AND IMPORTANT REASONS DO NOT EXIST TO WARRANT THIS COURT'S REVIEW ON PETITIONER'S WRIT OF CERTIORARI.

The absence of any issues appropriate for review by this Court is so apparent from the face of the Petition that Respondents will not burden this Court with any lengthy argument. It is fundamental that:

A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor

Sup. Ct. R. 17(1). The character of reasons that this Court is to consider in determining whether to exercise its discretion in reviewing a case on writ of certiorari include:

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court. Sup. Ct. R. 17(1).

The Petition fails to show any grounds for review. The basis for dismissal of Petitioner's lawsuit does not involve a substantive or genuine federal question. The present action does not involve a

decision by a federal court of appeals in conflict with the decision of another federal court of appeals on the same matter. The Fourth Circuit's decision has not departed from the accepted and usual course of judicial proceedings so as to call for an exercise of this court's power of supervision. As no special and important reasons exist to review this matter on writ of certiorari, this Court should decline to exercise its discretion to review the Fourth Circuit's decision dismissing Petitioner's action on jurisdictional grounds.

II. THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT CORRECTLY DETERMINED THAT THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION OVER PETITIONER'S COMPLAINT.

In his pleadings, the petitioner seems to be seeking a determination that his mother's will was invalid due to undue influence and lack of testamentary capa-

city. He also seeks removal of the attorneys representing the estate in ongoing probate proceedings in state court. It is well-settled that matters of probate and estate administration are excluded from federal jurisdiction and fall within the exclusive jurisdiction of the state probate court. Markham v. Allen, 326 U.S. 490, 66 S.Ct. 296, 90 L.Ed. 256 (1946); Foster v. Carlin, 200 F.2d 943 (4th Cir. 1952); Johnson v. Stephenson, 269 N.C. 200, 152 S.E.2d 214 (1967); Rice v. Rice Foundation, 610 F.2d 471 (7th Cir. 1979). The Fourth Circuit properly applied the established law in affirming the dismissal of Petitioner's action on jurisdictional grounds.

CONCLUSION

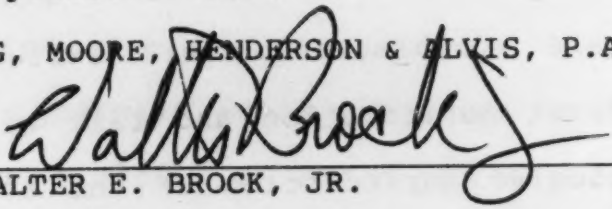
There are no special and important issues justifying review of this matter on

writ of certiorari and, therefore, this Court should deny the Petition.

Respectfully submitted, this 22
day of September, 1989.

YOUNG, MOORE, HENDERSON & ELVIS, P.A.

BY:


WALTER E. BROCK, JR.

BY:


RALPH W. MEEKINS

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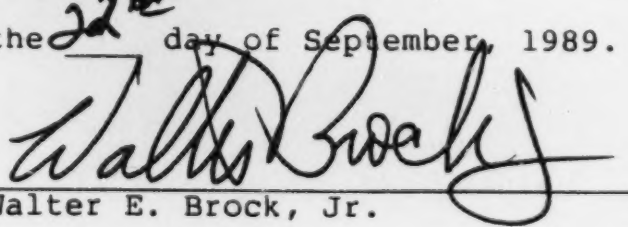
CERTIFICATE OF SERVICE

The undersigned attorney for Respondents Shelva P. Journigan and Bruce G. Journigan hereby certifies that on this day three copies of the foregoing Brief in Opposition of Respondents Shelva P. Journigan and Bruce G. Journigan was served upon the parties in this action by depositing them in an appropriate wrapper, in a United States Post Office or mailbox, with first-class postage prepaid, and addressed as follows:

Daniel L. Parrish
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Gary S. Parsons
Dorothy V. Kibler
BAILEY & DIXON
Post Office Box 12865
Raleigh, North Carolina 27605
Counsel for Respondents
Dobson and Narron

This the ^{22nd} day of September, 1989.


Walter E. Brock, Jr.